

**REMARKS**

Claim 1 has been rejected under 35 USC 102(e) as anticipated by Lepitre; claims 2 and 4 have been rejected under 35 USC 103(a) as unpatentable over Lepitre in view of Sweitzer; and claim 3 has been rejected under 35 USC 103(a) as unpatentable over Lepitre in view of Sweitzer, further in view of Zirwas. The rejections to claims 2-4 are moot since Sweitzer is not appropriate prior art. The filing date of the Sweitzer reference is, at the earliest possible date, November 17, 1999, after the filing date of the priority application of the instant application, namely July 30, 1999. The rejection to claim 1 is respectfully traversed.

Lepitre discloses a transmission system for transmitting information between two end devices. The system determines the largest possible bit rate between the two end devices, particularly with regard to the limited number of transmission methods implemented within the devices. To optimize the transmission, Lepitre discloses a method of testing a plurality of symbol rates with two different carrier frequencies each, before the start of the actual transmission process. These different transmission methods belong to the V.34 standard (col. 2, ln. 3; tables 1 and 2). Lepitre, however, fails to disclose determining and storing at least one transmission method with at least one transmission speed that represents a maximum data throughput rate, as required by the claimed invention. Lepitre, on the other hand, uses values predetermined in the V.34 standard. These values do not represent transmission method with a maximum data throughput rate. Rather, the values used specify symbol rates and carrier frequencies that can be used during the transmission process when using a certain standard, i.e. that the values are compliant with that standard. The values do not reveal information about the data throughput rate. The different symbol rates (and transmission rates) used in Lepitre do not reveal information about the data throughput rate, as the data throughput rate also depends on the line parameters of the line used for the transmission.

Since the recited method is not disclosed by the applied prior art, claim 1 is patentable.

Claims 5-9 have been rejected under 35 USC 112, first paragraph. The rejection is respectfully traversed. Claim 5 depends from claim 1, not claim 2, and describes a different embodiment.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 449122022600. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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